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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,585	12/31/2003	Harry K. Kraklow	K30-002-02-US	8988
26191	7590	12/16/2005	EXAMINER	
FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			TRAN LIEN, THUY	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 12/16/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/749,585

Applicant(s)

KRAKLOW ET AL.

Examiner

Lien T. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-58 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-58 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 18-19 and 36 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The range of beta glucan in claim 18 is not disclosed in the specification. The range of " about 7%" in claim 19 is not disclosed; the specification discloses 7%, not about 7%. The range of barley flour in claim 36 is not disclosed. The specification discloses at least .5%; there is no disclosure of the range about .5-3%.

Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 20, the use of trademark in the claim is indefinite because it is not known the composition of the product behind the trademark name.

Claims 13-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Simms et al (EPA 0145550) in view of Namdari and Pflaumer et al.

Simms et al disclose a non-refrigerated shelf-stable cookie dough. The shelf stable dough comprises about 5-20% by weight corn syrup or other viscous sweetener, from about 10-25% sucrose, from about 13%-30% shortening, from about 25-60% flour, from 0-3.5 encapsulated leavening agent, from about 0-7% humectant, from about 3-25% conventional cookie texturing and flavoring ingredients. The dough has a water activity of less than about .72 and a pH of about 6.5 or above. The corn syrup is chosen

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to obtain a dough having a water activity of less than .72. Suitable fats and shortening includes lard, tallow, hydrogenated animal oils, solid vegetable oils such as corn oil, peanut oil, coconut oil and soybean oil. Mixtures of fats or shortenings can also be used. Antimicrobial agents such as potassium sorbate, calcium sorbate etc.. can be used in amount ranging from about .15% -.30%. Typical cookie flavoring and texturizing ingredients include emulsifiers such as sorbitan, sodium stearoyl lactate, salt, egg, milk powder, peanut butter, vanilla, cocoa, particulate flavorings such as chocolate chips, oats, raisin and nut meats. The dough is shelf-stable for at least about six months under non-refrigerated conditions. The total moisture content of the dough ranges from about 6-10% by weight. (see pages 5,6,8-9,11,12,13 and14)

Simms et al do not disclose using barley flour in the amount claimed, the amount of beta glucan in the barley, the specific brand of barley in claim 20 and using palm oil.

Namdari discloses a dough mix for baked products such as cookies, cake, muffin etc.. Namdari teaches barley flour can be used and the amount of flour is up to 50%. (col. 1 lines 36-62)

Pflaumer et al disclose a dough for making cookies. Pflaumer et al disclose the type flour to use includes barley flour. (col. 5 lines 35-37)

It would have been obvious to one skilled in the art at the time of the invention to replace a portion of the wheat flour with barley flour because Simms et al disclose other flours conventionally used in the preparation of cookies can also be used and both Namdari and Pflaumer et al disclose barley flour is typically used in making cookies. It is well known in the art that barley flour is healthier than wheat flour because of its fiber

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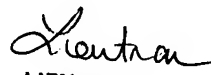
content. Thus, one would be motivated to use such flour to make a healthier product. The proportion used depends on the nutritional desired taken into consideration the taste, flavor and texture; one can readily determine the appropriate amount through routine experimentation to obtain product having satisfying taste, texture, flavor and nutrition. It would have been obvious to one to select any brand of barley flour having varying amounts of beta glucan depending on the content of fiber desired. It would have been obvious to use any known fat depending on the flavor wanted; palm oil is well known in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Wed-Fri.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

December 12, 2005


LIEN TRAN
PRIMARY EXAMINER
Group 1700